

AMENDED IN ASSEMBLY APRIL 3, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 187

Introduced by Assembly Member ~~Runner~~ Members *Runner and Garcia*

January 27, 2003

~~An act to amend Sections 23536, 23538, 23540, 23542, 23546, 23548, 23550, 23550.5, 23554, 23552, 23556, 23560, 23562, 23566, and 23568 of, and to add Section 42012 to, the Vehicle Code, relating to vehicles. An act to amend Sections 422.6, 422.7, 422.75, and 13519.6 of the Penal Code, relating to civil rights.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 187, as amended, Runner. ~~Driving under the influence: fines~~
Civil rights: armed forces membership.

Existing law punishes as a misdemeanor a person who uses force or threat of force to willfully injure, intimidate, interfere with, oppress, or threaten any person in the free exercise or enjoyment of a right or privilege because of that person's actual or perceived race, color, religion, ancestry, national origin, disability, gender, or sexual orientation. Similarly, existing law punishes the defacing, damaging, or destroying of real or personal property to intimidate or interfere with rights and privileges of people for these same reasons.

This bill would add service in the armed forces of the United States to those categories of characteristics of persons whose rights and privileges are protected by these provisions.

Existing law provides that, except for the above described conduct, any crime that is not made punishable by imprisonment in the state

prison shall be punishable by imprisonment in the state prison or in a county jail not to exceed one year, by a fine not to exceed \$10,000, or by both that imprisonment and fine if the crime is committed against the person or property of another for the purpose of intimidating or interfering with that other person's free exercise or enjoyment of any right secured to him or her by the Constitution or laws of California or the United States and because of the other person's actual or perceived race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, under specified circumstances.

This bill would add a person's service in the armed forces of the United States to those categories of characteristics of persons whose rights are protected by that law.

By expanding these crimes, this bill would impose a state-mandated local program.

Existing law provides, among other things, that except as provided in the felony provision described above, a person who commits a felony, or attempts to commit a felony, because of the victim's actual or perceived race, color, religion, nationality, country of origin, ancestry, disability, gender or sexual orientation shall receive an additional term of one, 2, or 3 years in the state prison, at the court's discretion. An enhanced penalty is also imposed on any person who commits or attempts to commit a felony against the property of a public agency or private institution because the property is identified or associated with a person who is a member of, or a group that is included within, one of the groups specified above. Existing law also imposes a penalty of 2, 3, or 4 additional years on a person who, while acting in concert with another person, commits or attempts to commit a felony because of the victim's membership in one or more of the above specified groups. Existing law provides for an additional one-year enhancement for each prior felony conviction for an offense committed because of the victim's membership in one of these groups for charges enhanced pursuant to these provisions, except as specified.

This bill would add service in the armed forces of the United States to those categories of characteristics of persons or groups whose protection is addressed by these enhancements.

By requiring prosecutors to plead and prove facts in support of these expanded enhancements, this bill would impose a state-mandated local program.

Existing law requires peace officers to take a specified course of study, including specified training on dealing with hate crimes, which



are defined for purposes of that training to include crimes motivated in whole or part by hostility to actual or perceived ethnic background, national origin, religious belief, gender, age, disability, or sexual orientation.

This bill would add to the definition of hate crimes for purposes of this training those crimes motivated in whole or part by hostility to actual or perceived service by a person in the armed forces of the United States. By adding to the specified types of training required of local peace officers, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~Under existing law, it is unlawful to drive a motor vehicle while under the influence of alcohol, a drug, or both, or 0.08% or more, by weight, of alcohol in one's blood. There is another crime of driving under the influence of alcohol, a drug, or both, or with 0.08% or more, by weight, alcohol in one's blood, and causing injury to another person. Under existing law, for violations of each of these offenses, commonly known as driving under the influence and driving under the influence causing injury, respectively, a court may impose a fine, among other sanctions, as specified.~~

~~This bill would generally increase the amount of the fines that are imposed for violating the above-described offenses and would require the amount of the fine to be doubled when the concentration of alcohol in the person's blood is 0.15% or more, by weight.~~

~~Vote: majority. Appropriation: no. Fiscal committee: no—yes. State-mandated local program: no—yes.~~

The people of the State of California do enact as follows:

~~SECTION 1. Section 23536 of the Vehicle Code is amended~~

SECTION 1. *Section 422.6 of the Penal Code is amended to read:*

422.6. (a) No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States because of the other person's race, color, religion, ancestry, national origin, disability, gender, *service in the armed forces of the United States*, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics.

(b) No person, whether or not acting under color of law, shall knowingly deface, damage, or destroy the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the Constitution or laws of this state or by the Constitution or laws of the United States, because of the other person's race, color, religion, ancestry, national origin, disability, gender, *service in the armed forces of the United States*, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics.

(c) Any person convicted of violating subdivision (a) or (b) shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars (\$5,000), or by both that imprisonment and fine, and the court shall order the defendant to perform a minimum of community service, not to exceed 400 hours, to be performed over a period not to exceed 350 days, during a time other than his or her hours of employment or school attendance. However, no person shall be convicted of violating subdivision (a) based upon speech alone, except upon a showing that the speech itself threatened violence against a specific person or group of persons and that the defendant had the apparent ability to carry out the threat.

SEC. 2. *Section 422.7 of the Penal Code is amended to read:*

422.7. Except in the case of a person punished under Section 422.6, any crime which is not made punishable by imprisonment in the state prison shall be punishable by imprisonment in the state prison or in a county jail not to exceed one year, by a fine not to exceed ten thousand dollars (\$10,000), or by both that imprisonment and fine, if the crime is committed against the person or property of another for the purpose of intimidating or interfering with that other person's free exercise or enjoyment of any right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, *service in the armed forces of the United States*, or sexual orientation, or because the defendant perceives that the other person has one or more of those characteristics, under any of the following circumstances, which shall be charged in the accusatory pleading:

(a) The crime against the person of another either includes the present ability to commit a violent injury or causes actual physical injury.

(b) The crime against property causes damage in excess of five hundred dollars (\$500).

(c) The person charged with a crime under this section has been convicted previously of a violation of subdivision (a) or (b) of Section 422.6, or has been convicted previously of a conspiracy to commit a crime described in subdivision (a) or (b) of Section 422.6.

SEC. 3. Section 422.75 of the Penal Code is amended to read:

422.75. (a) Except in the case of a person punished under Section 422.7, a person who commits a felony or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, *service in the armed forces of the United States*, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(b) Except in the case of a person punished under Section 422.7 or subdivision (a) of this section, any person who commits a felony or attempts to commit a felony against the property of a public agency or private institution, including a school, educational facility, library or community center, meeting hall, place of

1 worship, or offices of an advocacy group, or the grounds adjacent
2 to, owned, or rented by the public agency or private institution,
3 because the property of the public agency or private institution is
4 identified or associated with a person or group of an identifiable
5 race, color, religion, nationality, country of origin, ancestry,
6 gender, disability, *service in the armed forces of the United States*,
7 or sexual orientation, shall receive an additional term of one, two,
8 or three years in the state prison, at the court's discretion.

9 (c) Except in the case of a person punished under Section 422.7
10 or subdivision (a) or (b) of this section, any person who commits
11 a felony, or attempts to commit a felony, because of the victim's
12 race, color, religion, nationality, country of origin, ancestry,
13 gender, disability, *service in the armed forces of the United States*,
14 or sexual orientation, or because he or she perceives that the victim
15 has one or more of those characteristics, and who voluntarily acted
16 in concert with another person, either personally or by aiding and
17 abetting another person, shall receive an additional two, three, or
18 four years in the state prison, at the court's discretion.

19 (d) For the purpose of imposing an additional term under
20 subdivision (a) or (c), it shall be a factor in aggravation that the
21 defendant personally used a firearm in the commission of the
22 offense. Nothing in this subdivision shall preclude a court from
23 also imposing a sentence enhancement pursuant to Section
24 12022.5, 12022.53, or 12022.55, or any other law.

25 (e) A person who is punished pursuant to this section also shall
26 receive an additional term of one year in the state prison for each
27 prior felony conviction on charges brought and tried separately in
28 which it was found by the trier of fact or admitted by the defendant
29 that the crime was committed because of the victim's race, color,
30 religion, nationality, country of origin, ancestry, disability, gender,
31 *service in the armed forces of the United States*, or sexual
32 orientation, or that the crime was committed because the defendant
33 perceived that the victim had one or more of those characteristics.
34 This additional term shall only apply where a sentence
35 enhancement is not imposed pursuant to Section 667 or 667.5.

36 (f) Any additional term authorized by this section shall not be
37 imposed unless the allegation is charged in the accusatory pleading
38 and admitted by the defendant or found to be true by the trier of
39 fact.

(g) Any additional term imposed pursuant to this section shall be in addition to any other punishment provided by law.

(h) Notwithstanding any other provision of law, the court may strike any additional term imposed by this section if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

(i) (1) “Because of” means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result.

(2) This subdivision does not constitute a change in, but is declaratory of, existing law under *In Re M.S.* (1995) 10 Cal. 4th 698 and *People v. Superior Court (Aishman)* (1995) 10 Cal. 4th 735.

SEC. 4. *Section 13519.6 of the Penal Code is amended to read:*

13519.6. (a) The commission shall, on or before December 31, 1993, develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes. “Hate crimes,” for purposes of this section, means any act of intimidation, harassment, physical force, or the threat of physical force directed against any person, or family, or their property or advocate, motivated either in whole or in part by the hostility to the real or perceived ethnic background, national origin, religious belief, gender, age, disability, *service in the armed forces of the United States*, or sexual orientation, with the intention of causing fear and intimidation.

(b) The course shall make maximum use of audio and video communication and other simulation methods and shall include instruction in each of the following procedures and techniques:

(1) Indicators of hate crimes.

(2) The impact of these crimes on the victim, the victim’s family, and the community.

(3) Knowledge of the laws dealing with hate crimes and the legal rights of, and the remedies available to, victims of hate crimes.

(4) Law enforcement procedures, reporting, and documentation of hate crimes.

1 (5) Techniques and methods to handle incidents of hate crimes
2 in a noncombative manner.

3 (c) The guidelines developed by the commission shall
4 incorporate the procedures and techniques specified in subdivision
5 (b).

6 (d) The course of training leading to the basic certificate issued
7 by the commission shall, not later than July 1, 1994, include the
8 course of instruction described in subdivision (a).

9 (e) As used in this section, "peace officer" means any person
10 designated as a peace officer by Section 830.1 or 830.2.

11 *SEC. 5. No reimbursement is required by this act pursuant to*
12 *Section 6 of Article XIII B of the California Constitution for*
13 *certain costs that may be incurred by a local agency or school*
14 *district because in that regard this act creates a new crime or*
15 *infraction, eliminates a crime or infraction, or changes the penalty*
16 *for a crime or infraction, within the meaning of Section 17556 of*
17 *the Government Code, or changes the definition of a crime within*
18 *the meaning of Section 6 of Article XIII B of the California*
19 *Constitution.*

20 *However, notwithstanding Section 17610 of the Government*
21 *Code, if the Commission on State Mandates determines that this*
22 *act contains other costs mandated by the state, reimbursement to*
23 *local agencies and school districts for those costs shall be made*
24 *pursuant to Part 7 (commencing with Section 17500) of Division*
25 *4 of Title 2 of the Government Code. If the statewide cost of the*
26 *claim for reimbursement does not exceed one million dollars*
27 *(\$1,000,000), reimbursement shall be made from the State*
28 *Mandates Claims Fund.*

29
30
31 **All matter omitted in this version of the**
32 **bill appears in the bill as introduced in the**
33 **Assembly, January 27, 2003 (JR 11)**
34
35